



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 12-1703
October 23, 2012

PETITION OF EASTLINK INTERNATIONAL (USA) INC. TO MODIFY ITS REGULATORY CLASSIFICATION ON THE U.S.-BERMUDA ROUTE

Pleading Cycle Established

IB Docket No. 12-311

Comments/ Oppositions Due: November 13, 2012
Replies Due: November 27, 2012

The International Bureau seeks comment on a petition filed by Eastlink International (USA) Inc. (“Eastlink”) to modify its status from dominant to non-dominant for the provision of international services on the U.S.-Bermuda route. In addition, Eastlink requests that the Commission remove its foreign affiliate, LinkBermuda Ltd. (formerly Cable & Wireless Bermuda, Ltd., “LinkBermuda”), from the Commission’s *List of Foreign Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets*.¹

Eastlink argues that it should be reclassified as non-dominant because LinkBermuda does not possess market power on the U.S.-Bermuda route.² According to Eastlink, the Bermuda telecommunications marketplace has undergone major liberalization since the mid-1990s, and multiple new facilities-based carriers have been licensed to compete against LinkBermuda. Thus Eastlink argues that under the Commission’s rules,³ it should be presumptively classified as non-dominant because LinkBermuda has a less than a 50 percent share in the three relevant markets in Bermuda: (1) international transport facilities and services, including cable landing station access, (2) inter-city facilities or services, and (3) local access facilities and services. Therefore, Eastlink states that LinkBermuda lacks sufficient market power in Bermuda to affect competition adversely in the U.S. market.

Eastlink argues that the information in its petition supports its reclassification as non-dominant on the U.S.-Bermuda route and satisfies the Commission’s standard for rebutting the presumption that LinkBermuda possesses sufficient market power in Bermuda pursuant to section 43.51 of the

¹ *List of Foreign Telecommunications Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets*, Public Notice, DA 07-233, 22 FCC Rcd 945 (Int’l Bur. 2007), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-233A1.pdf.

² Pursuant to section 63.13 of the Commission rules, 47 C.F.R. § 63.13, a carrier that seeks to modify its regulatory status from dominant to non-dominant on a particular route must provide information to demonstrate that it qualifies for non-dominant classification under to section 63.10 of the Commission rules, 47 C.F.R. § 63.10.

³ See 47 C.F.R. § 63.10(a)(3).

Commission's rules, 47 C.F.R. § 43.51. Consequently, Eastlink also requests that the Commission remove LinkBermuda from the list of foreign carriers that are presumed to possess market power in foreign telecommunications markets.

EX PARTE STATUS OF THIS PROCEEDING

Pursuant to section 1.1200(a) of the Commission's rules,⁴ the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if it finds that the public interest so requires. We announce that this proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁵

Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

GENERAL INFORMATION

Interested parties must file comments or oppositions to the petition no later than **November 13, 2012**. Replies to such comments or oppositions must be filed no later than **November 27, 2012**. All filings concerning matters referenced in this Public Notice should refer to **DA 12-1703, ISP-PDR-20120622-00002, ITC-MOD-20120622-00263, and IB Docket No. 12-311**.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

⁴ 47 C.F.R. § 1.1200(a) (2011).

⁵ 47 C.F.R. §§ 1.1200 *et seq.*

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Additionally, filers may deliver courtesy copies by email or facsimile to the following Commission staff:

(1) James Ball, Policy Division, International Bureau, at James.Ball@fcc.gov or (202) 418-2824 (facsimile);

(2) David Krech, Policy Division, International Bureau, at David.Krech@fcc.gov or (202) 418-2824 (facsimile);

(3) Mark Uretsky, Policy Division, International Bureau, at Mark.Uretsky@fcc.gov or (202) 418-2824 (facsimile);

For further information, contact David Krech, Policy Division, International Bureau, at 202-418-7443.

- FCC -